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Press and Information

Advocate General's Opinion in Case C-495/10
Centre hospitalier universitaire de Besançon v Thomas Dutreux
and Caisse primaire d'assurance maladie du Jura

According to Advocate General Mengozzi, a public healthcare establishment, in its capacity as a service provider, does not fall within the scope of the liability rules contained in the directive on liability for defective products

However, the directive allows Member States to lay down rules whereby a public healthcare establishment must, even where it is not at fault, pay compensation for injury suffered by a patient as a result of a defect in equipment or a product used in treating him

The Product Liability Directive[1] establishes a principle of no-fault liability, whereby a producer (manufacturer of a finished product, producer of a raw material or manufacturer of a component) is liable for damage caused by a defect in his product[2]. Where the producer of the product cannot be identified, each supplier of the product will be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product.

Moreover, the directive does not affect any rights which an injured person may have under the rules of the law of contractual or non-contractual liability or special rules on liability existing at the time the directive is notified.

In French law, the liability of public healthcare establishments towards their patients is governed inter alia by a principle established in a judgment of the Conseil d'État (France) of 9 July 2003, whereby a public hospital must, even where it is not at fault, pay compensation for injury suffered by a patient as a result of a defect in equipment or a product used in the treatment he is given.

In the present case, Mr Dutreux, aged 13 at the time, suffered burns during surgery carried out in 2000 at the Centre hospitalier universitaire (CHU) (University Hospital), Besançon (France). The burns were caused by a heated mattress on which he had been laid and which had a defective temperature control mechanism. CHU Besançon was ordered to pay compensation for the injury.

The Conseil d'État, hearing this case at last instance, questions the Court of Justice as to the interpretation of the directive, namely, whether the French rules on no fault liability of public hospitals can exist alongside the rules of producer liability introduced by the directive.

In his Opinion delivered today, **Advocate General Mengozzi states first of all that the European Union legislature did not intend that the directive should introduce liability rules for defective products that applied also to service providers.**

The Advocate General notes that the Court has never ruled directly on expanding the scope of the directive to cover a service provider's liability for a defective product. In fact, the directive covers only the liability of the 'producer' or, where appropriate, the 'supplier' of a defective product. Although the directive does not define a 'supplier', the latter is construed as being an intermediary in the supply or distribution chain for that product.

[1] Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).
[2] The term 'producer' means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer.

In the present case, the person concerned was not a consumer who had come for a mattress but a patient who had been admitted to hospital. Therefore, the safety of the defective mattress should be considered in conjunction with the provision of treatment itself. CHU Besançon cannot therefore be regarded as being the distributor of the defective mattress and cannot be likened to a 'supplier' within the meaning of the directive.

The Advocate General concludes that a service provider – such as CHU Besançon – cannot be likened to a 'supplier' within the meaning of the directive. Therefore, the scope of the directive does not extend to the liability of a service provider for injury caused by a defective product in connection with the provision of a service.

That position is consistent with the case-law of the Court[3], according to which the directive is not intended to govern every aspect of the area of liability for defective products but is an initial step towards further harmonisation.

Consequently, in order to ensure effective protection for consumers, the Advocate General states that **the directive allows Member States to lay down national rules on the liability of public healthcare establishments which use defective equipment or products in connection with the provision of a service and, in so doing, cause injury to the recipient of that service – that is to say, the patient – whilst allowing them to exercise a right of recourse against the producer on the basis of the directive.**

Moreover, in the present case, the Advocate General points out that only the application of the national rules concerning the liability of the service provider would afford the patient the right to compensation for the burns caused by the defective mattress. Since that injury occurred during surgery carried out on 3 October 2000, the injured person's action against the 'producer' of the defective mattress, within the meaning of the directive, would be time-barred (10-year limitation period).

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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[3] Case C-203/99 *Veedfald* and Case C-285/08 *Moteurs Leroy Somer.*